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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/519,847	03/06/2000	Pierre Ripoche	Q58134	8169

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EXAMINER
HOFFMANN, JOHN M

ART UNIT	PAPER NUMBER
1731	23

DATE MAILED: 11/07/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/519,847	Applicant(s) RIPOCHE ET AL.	
	Examiner John Hoffmann	Art Unit 1731	

-- The MAILING DATE of this communication appears on the cover sh et with th correspond nc address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *24 October 2002* .

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-3* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-3* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Claim Objections

Claim 1 is objected to because of the following informalities: Line 2, "possibly" was changed to "possible" without the changes therefore made in the "marked-up copy of the amendment. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-3 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Line 5 of claim 1 refers to "at least one pass". Line 7 refers to "said one pass" : it is unclear if this should have been "said at least one pass" - or if it refers to only one of the passes (if there is more than one). Claim 2 makes the problem worse because it refers to "each" pass - and it is unclear such only refers to the the "at least one pass" or "said one pass".

Claim Rejections - 35 USC § 103

Claims 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fujikkura JP 4-160028 in view of Le Sergent 5194714 and optionally in view of Yokota 4846867 and Fleming 4872895.

Fujikura discloses the invention, except for the plasma torches. Le Sergent disloses at col. 1, lines 15-38 that hydroxyl ions cause absorption and that plasma torches can be operated so that these problematic ions are not introduced. Yokota and Fleming are cited as showing that it is know that conventional flames will introduce hydroxyl ions (due to the hydrogen and oxygen combining in the flame) (see col. 5, lines 12-15 and col 1, lines 62-63 of Yokota and Fleming, respectively).

It would have been obvious to use plasma torches in the Fujikura method so as to provide a heating source that does not introduce any detrimental hydroxyl ions into the glass. It is noted that Applicant essentially admitted at the paragraph spanning pages 3-4 of the specification that plasma burners are known substitutes for other burners.

As to the soot being silica, it would have been obvious to use silica soot, since it is the cheapest known base material for soot-deposited preforms for optical fibers (alteratively because some soot is needed and LeSergent discloses that such is known.

Fujikura's 9 is the heating means, and 17 is the injecting means. As to the "heating area" and "vicinity", one can arbitrarily designate any areas to be the area and the vicinity. It is noted that the heating area is not defined in a way that it precludes un heated sections, nor is "vicinity" defined in a way that precludes heated portions. For example, the heated area can be a split (length-wise) half of the preform, and the vicinity can be the other half.

Fujikura states that "bases 7 and 15 are successively and alternately reciprocated." Therefore, there relative positions are changed (i.e. adjusted). If their relative positions were not, changed, they would have to reciprocated at exactly the same times.

As to claim 3, see figure 2 of Fujikura.

All of the rest of the limitations of claims 1-3 are clearly met.

Response to Arguments

Applicant's arguments filed 24 October 2002 have been fully considered but they are not persuasive.

It is argued that the heating area is the area ABCD shown in the drawings. The area ABCD itself is an arbitrary area. One of ordinary skill would be at a complete loss as to what this area is. Examiner assumes that this area is defined by some temperature. However, there is no indication as to what that temperature is. Since the

claims do not limit the area to what the temperature is, examiner has no choice but to give a very broad interpretation to what the area is.

Common sense dictates that regions outside of ABCD would much hotter than room temperature: as a hot plasma torch traverses the preform, the location it just left would still be very hot. It would take a while for the heat to disappate. It is appropriate to consider those areas (which remain heated) to be "heated areas".

It is further argued that Fujikura does not teach that the injector means and heating means are associated with each other. Given the broadest reasonable interpretation: all of the features of Fujikura are associated with each other - because they are all part of one apparatus/system. The fact that there are additional heating means and injector means that are fixed relative to each other, is irrelevant since the claims are comprising in nature and are open to additional structure which is not adjustable.

There is only an allegation that the means 9 and 17 are not associated with each other. But there is no rationale or evidence to support this. The previous Office action(s) has made it clear why the means are associated with each other; but no argument has been presented which points out the error in the Office's determination they are associated features.

It is further argued that Fujikura does not have the benefits that Applicant discovered. This is not persuasive, because the claims are not limited to a method which has the benefits. The claims are broad enough to encompass methods which

lack the benefits: it is improper to grant a patent based on benefits when the claims don't have the benefits.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Hoffmann whose telephone number is 703-308-0469. The examiner can normally be reached on Monday through Friday, 7:00- 3:30.

The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-7115 for regular communications and 703-305-3599 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0651.

11-6-02

John Hoffmann
Primary Examiner
Art Unit 1731

jmh
November 6, 2002